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THE MAYOR AND THE REVISED NEW YORK CITY CHARTER.

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REVISE THE NEW YORK CITY CHARTER.

THE City of New York now exists under a Charter enacted in 1897, and which went into effect on the first day of January, 1898. It will be superseded on the first day of January, 1902, by what is, in many respects, a new instrument.

The occasion for the Charter of 1897 was the consolidation of the then City of New York—containing something less than two million inhabitants—with the City of Brooklyn and with a wide extent of agricultural and suburban territory included in nearly ninety towns and villages. The entire population of the municipality thus created is, in round figures, about three and a half millions, and the conditions of its different parts are heterogeneous to a remarkable degree. The lower east side of Manhattan, inhabited largely by Russian and Polish Jews, is believed to be the most densely populated spot in the world. In Queens, the largest in territory of the five boroughs into which the city is subdivided, as also in Richmond, there are large stretches of purely agricultural land, and much lonely marsh and salt meadow. Brooklyn consists chiefly of a great extent of small houses without any excessive congestion of population. Flushing, Westchester Village, and New Brighton are typical centres for suburban homes.

The scheme of the Charter of 1897 looked to a complete administrative and legislative centralization of all this conglomeration of parts. The city, it is true, was subdivided into the five boroughs of Manhattan, Brooklyn, The Bronx, Queens and Richmond; but these boroughs were little more than geographical expressions, and (except in the case of their public schools) possessed not the very least autonomy. In the main the features of the Charter of the former City of New York were re-enacted

and extended throughout all the boroughs. Their finances were managed and their taxes collected by a central department. There was one Police Department, one Fire Department, and one Board of Health. There was a Department of Highways, a Department of Sewers, a Department of Public Buildings, a Department of Water Supply, a Department of Bridges—each practically independent of the others, and each charged with duties extending through the whole area of the city.

Over all the departments was the Mayor, in appearance supreme, but in reality nearly powerless as an executive during the greater part of his term of office. He had indeed the unrestricted power as vacancies might occur to appoint every head of a department, except the head of the Department of Finance. And during the first six months of his term he had the unrestricted power to remove any public officer holding office by appointment from the Mayor, except members of school boards and minor magistrates. During the other three years and six months the Mayor could only remove his subordinates "for cause upon charges preferred and after opportunity to be heard," and then only with the approval of the Governor of the State.

At first sight, and to the ordinary mind, the requirement that a city official should not be dismissed by the Mayor except for cause and after an opportunity to be heard, seems but a reasonable provision to prevent hasty or arbitrary action. But the courts take quite a different view of this seemingly harmless provision. The Court of Appeals decided twenty years ago that it was not a mere administrative regulation; that a charge, when preferred, must be sustained by formal proof; that the accused had a right to appear by counsel; that the Mayor, in hearing charges against his subordinates, acted in a quasi-judicial capacity; and that his decision was in consequence reviewable by the courts.* The Mayor, therefore, if he wished to dismiss a head of department who had turned out to be careless or inefficient, was required first to conduct a trial with all the formality of a court of law; next to get the Governor of the State to approve his action; and finally the Supreme Court of the State and the Court of Appeals must be induced to confirm the sentence. The results were deplorable. In the words of one learned and experienced judge, "Such a construction virtually prevents all removals, and reduces the scheme

*People *ex rel.* Mayor v. Nichols, 79 N. Y. 582.

of the Charter to an incongruous absurdity.”† Under the Charter of 1897 every head of department, for the last seven-eighths of the Mayor’s term of office, was in effect relieved from any fear of punishment—except so far as he might be affected by public opinion or reached by the criminal courts. He certainly was not in any effective way under the control of the Mayor.

The Mayor on his part was relieved of responsibility for the conduct of the several departments. Having but six months in which to remove at will, any Mayor would almost of necessity make within that time what is called “a clean sweep” and fill all the offices with his own friends—or at least with the nominees of the political faction to which he happened to belong. When the six months were at an end his powers were exhausted. The administration of the city’s affairs were vested thenceforward in eighteen separate and independent departments, each with its irremovable head and subject to no common official control. The Mayor might be held responsible for the wisdom or unwisdom of his original appointments. He could not be held responsible otherwise. He might disapprove the acts of a subordinate, but he had no effectual means of forbidding them. He might scold, but he could not command.

Another feature of the Charter of 1897 which was of great importance was the peculiar system of financial administration inherited from the former City of New York. Nominally the annual budget was voted by the local legislature—the Municipal Assembly. Actually the Assembly was limited to a mere formal approval of the budget as drafted by the Board of Estimate and Apportionment. This Board, which had been doing valuable service in the city for twenty-five years, consisted of the Mayor, the Comptroller, the President of the Council, the Corporation Counsel, and President of the Tax Department. The Comptroller was the head of the Finance Department. The President of the Council was the Deputy Mayor, and presided over the upper house of the Municipal Assembly. They were both elective officers, chosen at the same time, by the same constituency, and for the same term of office as the Mayor. The Corporation Counsel and the President of the Tax Department were appointees of the Mayor.

†Dissenting opinion of DAVIS, P. J., in *People ex rel. Nichols v. Cooper*, 21 Hun. 517.

Besides the annual budget for current expenses, the city must every year raise large sums of money by loans, either to retire maturing obligations or to provide for new public improvements. Under the Charter of 1897 the authority for every loan was to be first granted by the Board of Estimate and Apportionment, and their action was then to be ratified by a vote of three-fourths of all the members of each house of the Municipal Assembly. The Assembly had in the matter of loans rather more power than in the matter of the annual budget, and it sometimes chose to delay the necessary ratification. But for most practical purposes it may be said that the financial policy of the city was determined in the long run by the Board of Estimate and Apportionment, over which the Mayor presided, and of which he was the leading member.

Such were some of the more important features of the Charter of 1897, an instrument which had been severely criticized at the time of its enactment, and which had not increased in favor in actual operation. Innumerable amendments were constantly proposed, and finally the State Legislature authorized the Governor to appoint a commission to examine into the effect and working of the Charter, and to suggest amendments. The commission, as required by the terms of their appointment, presented their report to the Governor in December, 1900, in which they dwelt upon the two fundamental defects above noted of too much centralization and too little real responsibility. These defects they sought to remedy by centering responsibility and, in some measure, decentralizing administration.

For this purpose they recommended two very radical changes. First, they advised that the boroughs should be made autonomous, so far as related to the care of their own streets, sewers and public buildings—all such work to be under the sole control of a locally elected official styled the Borough President. Second, they advised that the Mayor should have power to remove any official holding office by appointment from a Mayor (except School Commissioners, Magistrates, etc.) “whenever in his judgment the public interests shall so require.” As a consequence of this grant of a power of removal, they suggested that no appointed public officer should hold his office for any specific term—except in the case again of Magistrates and the members of certain boards, of which the members were to retire in rotation.

The powers of the Mayor were thus diminished by removing entirely from the control of his appointees all such matters as were to be separately administered in each borough; and inasmuch as all such public works as the construction, repair and maintenance of highways and sewers constantly require the employment of large numbers of men, the power and patronage of the Borough Presidents under the scheme of the commission became very great, and the political value of the Mayor's patronage was correspondingly diminished. On the other hand, the Mayor's real control over administration was enormously increased by his absolute power of removal, and he was thus made more effectually responsible for the efficient conduct of the departments of law, police, fire, and health, the supply of water, the cleaning of the streets, the maintenance of the city's bridges and parks, the collection of taxes, and the proper conduct of the hospitals and prisons.

One further important change was recommended which directly affected the Mayor. The composition of the Board of Estimate and Apportionment was changed, and its powers were enlarged. The change in the composition of the Board was suggested, not so much because it was thought desirable in itself, as because it seemed a necessary consequence of the proposed autonomous borough government and the unlimited power of removal conferred on the Mayor. The authority to appropriate money for the local purposes of the several boroughs—whether from annual taxation or as the proceeds of loans—seemed to make it proper that each borough should have a direct representation on the Board. As the Mayor's power of removal was to be enlarged, it was evident that his appointees would be under his influence to a far greater extent than before, and that he would have actually three votes out of five if the Board were left unchanged.

The commission therefore recommended that the Board of Estimate should be composed solely of elective officers, viz.: The Mayor, the Comptroller, and the President of the Board of Aldermen (elected by the city at large), and the Presidents of the five Boroughs (each elected locally). But, said the commission:

"In adding the Borough Presidents to the Board of Estimate and Apportionment another question required consideration. If the Borough Presidents were to possess a voting power, not only equal to that of each other, but also to that of the other members of the Board, they might together control its decisions; and this would mean that the financial control of the city would pass from the officials who are

not directly interested in the spending of the city's money to officers at the head of great administrative agencies and charged with the duty of spending large sums in the development and improvement of the particular localities they were elected to represent. It therefore seemed essential that the total voting power of the five Borough Presidents should be less than that of the officers elected from the city at large; and it was not thought just to give to the representatives of the smaller boroughs an equal vote with the Presidents of the two great Boroughs of Manhattan and Brooklyn.

"What should be the representation of the different elements in the Board of Estimate and Apportionment has been one of the most difficult questions which the Commission has had to answer. We propose to give three votes to each of the officers elected at large; two votes each to the Presidents of the Boroughs of Manhattan and Brooklyn; and one vote each to the Presidents of The Bronx, Queens and Richmond. It will be perceived that the total number of votes in the Board will be sixteen, and that nine of these votes will be cast by the officers elected at large, assuring to them a control of the Board."

The extensive modification thus proposed in the composition of the Board of Estimate and Apportionment obviously would effect a very substantial change in the relation of the Mayor toward the Board. Under the Charter of 1897 and the preceding charter of the old City of New York, the Mayor was by all odds the most important personage in the Board. Two of its five members were his appointees, while the other two, elected on the same ticket with him, were almost necessarily in political harmony with him. Under the proposed revision the Mayor would no longer be the official creator or patron of any of his colleagues on the Board; and, as the Borough Presidents were to be elected by entirely different constituencies from those that elected the Mayor, they might be and often would be politically opposed to him.

In general the recommendations of the Revision Commission were acceptable to the State Legislature of 1901. Most of the proposed amendments to the Charter were enacted into law, to go into effect on the first day of January, 1902; and the next Mayor of New York will therefore take office for the term and with the powers and duties prescribed by the revised Charter. But in two highly important respects the carefully adjusted scheme of the commission has been departed from. The Mayor's term of office has been cut down from four years to two; which means practically cutting down the term of office of his appointees in like manner. And the Mayor's responsibility for the conduct of the police has been weakened by giving both to the Governor of the

State, and also to the Mayor, the absolute power to remove the Commissioner of Police whenever in the judgment of either of them the public interest may require it. The second of these changes was made after extensive discussion and for well understood political reasons. The reduction in the length of the Mayor's term of office was unfortunately effected in the State Legislature without debate, and without any public statement by the party leaders of the object or purpose of the change.

Both changes have this effect in common, that they serve to make it more difficult for any Mayor to find fit men to take office under him. It is hard enough to get men who can earn a good living in other employments to enter the public service in any subordinate capacity. It is harder to get such men to take office for two years than for four. And it will be almost impossible to secure the services of a capable and self-respecting man where, as in the case of the Police Commissioner, the appointee to keep his place must satisfy two independent and sometimes hostile masters.

In other respects than those above referred to the amendments to the Charter do not materially affect the office of Mayor. His power to veto the ordinances of the local legislature—hereafter to be known as the Board of Aldermen—is little changed. No measure disapproved by him can take effect unless repassed by the votes of at least two-thirds of all the members of the Board; if the measure involves the expenditure of money or the creation of a debt, a three-fourths vote is necessary; while if it involves the grant of a franchise, the Mayor's veto is final. This is a tremendous weapon of defence, because indirectly the Mayor is thus given a veto over the Board of Estimate and Apportionment. On many subjects, such as the annual budget, the issue of loans for certain purposes, and the grant of franchises, the resolutions of the Board of Estimate are not valid till ratified by the Aldermen and approved by the Mayor.

The principal powers and duties of the Mayor as prescribed by the Charter are therefore: the unrestricted power to appoint and remove at will his principal subordinates; the duty of sitting on the Board of Estimate and Apportionment and shaping the financial policy of the city; and the power to veto all ordinances of the Board of Aldermen, including those framed by the Board of Estimate and Apportionment. Outside of the Charter pro-

visions he has the duty, under the State Constitution, of examining acts passed by the Legislature, and the valuable power of suspensive veto. He is a member *ex officio* of some important bodies, such as the Rapid Transit Commission and the Trustees of the Sailors' Snug Harbor. He has also the really important duty of representing the city on all ceremonial occasions.

And yet, notwithstanding his possession of all this great authority, the Mayor of New York will continue to serve under the most serious limitations upon his usefulness. He must overcome, of course, such difficulties as are common to every executive officer of the United States—the exaggerated and hysterical activity of the press, the adroit schemes of individuals to reach the public treasury, the unceasing pressure of the great corporations which depend for their existence upon the possession of franchises in the public streets. Beyond this, he must also meet obstacles which are perhaps peculiar to the City of New York. In the first place, his administration will be hampered during the entire first half of his term of office by the fact that the budget for the year has already been fixed beyond recall under his predecessor.* In the second place, the Board of Aldermen under the revised Charter may exercise a very important influence in helping or hindering reforms and economies. But the recent traditions attached to the office of Alderman, and the lack of opportunities for useful public service that have heretofore existed, have induced capable men to refrain from seeking elections and make it improbable that for some time to come that Board will prove helpful to the Mayor. In the third place, there are the exasperating difficulties of filling the principal offices, upon whose efficient conduct the success of the Mayor's administration must mainly depend. The shortness of the term of office, the insufficient salaries, and the necessarily rigid system under which public business must be conducted, all combine to discourage the best men from accepting office.

But probably the most serious difficulty with which a Mayor must contend is the constant menace of legislation by the State authorities, sometimes merely useless, often in a direction opposed to the true interests of the city. In the matter of expenditure

*By a special provision of the revised Charter, the Board of Estimate and Apportionment may amend the budget for 1902 at any time before May 1, 1902. This exception was made necessary by the adoption of the new borough system, and is contrary to the general financial policy of the Charter.

alone, the efforts of the best disposed city officials will always be paralyzed so long as the salaries of the army of policemen, firemen and school teachers are fixed in Albany.

The truth is that the political conditions under which the City of New York is governed, are quite anomalous. Under the Federal Constitution the State of New York has exclusive power of legislation over all the ordinary subjects of municipal activity; and the State Legislature not only has this exclusive power to deal with city affairs, but it has always shown itself exceedingly ready to exercise it. Moreover, the vote of the city in national elections has almost always been opposed to the vote of the rest of the State, and the constituencies happen to be so made up that the Democratic party—which is in a large majority in the city—is almost always in a minority in the Legislature. Mr. Tilden's estimate was that the Democratic party must carry the State by fifty thousand majority in order to carry the Legislature; and the figure would probably be greater to-day.

We have therefore the case of a sovereign State of considerable extent, of great wealth, containing some seven million inhabitants, in which half the people and more than half the wealth are contained in one huge city. We have moreover a sovereign Legislature, not engrossed by other more important work, not friendly politically, and willing to interfere at any moment in the regulation of the city's local affairs. The consequences are, first, an enormous mass of confused, ill-digested and constantly shifting legislation, which deals with almost inconceivable minuteness with matters of the most trivial concern; and, second, an inevitable tendency on the part of the people of the city to look to the rest of the State for relief from unsatisfactory conditions, rather than to rely for help upon their own exertions.

Against such a state of things protests have been earnest and long continued, and conditions are improving. At one time the Mayor was appointed by the Governor of the State. At a later period the heads of the Police and Fire departments were appointed in the same way. Only thirty years ago the budget of the city was voted at Albany. Until 1895 laws might be finally passed by the State Legislature affecting the city's most important interests without any notice to the local authorities, and of course without any opportunity to protest. And it was the effort of the Revision Commission of 1900, as it was the effort of the framers

of the Charter of 1897, to obviate much useless or harmful State legislation by equipping the city "with power to decide for itself what it will do within the well-recognized range of ordinary municipal activity," as well as by conferring upon its executive officers adequate powers to carry out efficiently any policy it might adopt.

How far this latest experiment for home rule will prove successful must largely depend on the character and capacity of the officers whom the people elect.

In conclusion, it may be pointed out that although the opportunities of the Mayor for useful public service are to some extent limited by the unyielding requirements of State statutes and by the conditions and traditions surrounding public office, yet his opportunities for harm are bounded only by the length of his term of office. An evil disposed or negligent or dull man as Mayor can always work incalculable mischief by bad appointments, or by promoting or not opposing measures intended to rob the city treasury. The ablest and best-intended Mayor cannot, perhaps, under existing conditions do much efficient or lasting work of a constructive kind; but he has ample power and will have ample opportunity to prevent an immense amount of harm. In the short period of two years he can hardly hope to effect extensive economies or to institute far-reaching and thorough reforms. What he can fairly hope to do is to see that the city takes no detriment; to insist upon and secure at least an honest administration; and to put a stop to much evil legislation. The man who can really do this, laboring for the interests of the city alone and not for himself or for the interests of any party or faction, is sure of a high place in the esteem and affection of the people.

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